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Third report of the Secretary-General pursuant to paragraph 14 of resolution 1284 (1999)

I. Introduction

1. The present report is submitted pursuant to paragraph 14 of Security Council resolution 1284 (1999), in which the Council requested me to report every four months on compliance by Iraq with its obligations regarding the repatriation or return of all Kuwaiti and third-country nationals or their remains and every six months on the return of all Kuwaiti property, including archives, seized by Iraq.

2. Since the adoption of resolution 1284 (1999) on 17 December 1999, I have submitted two reports (S/2000/347 and Corr.1 and S/2000/575). On 17 August 2000, the high-level Coordinator, Ambassador Yuli Vorontsov, briefed the Security Council on the repatriation or return of all Kuwaiti and third-country nationals or their remains. The present report covers issues of both the missing persons and the return of all Kuwaiti property and provides a brief account of the situation regarding these files one year after the adoption of the aforementioned resolution.

II. Background

3. In my annual report on the work of the Organization,[1] it is noted that in its resolution 1284 (1999) the Security Council also reiterated Iraq's obligation to repatriate all Kuwaiti and third-country missing nationals and to return all Kuwaiti property. Iraq had not agreed to cooperate with the high-level Coordinator I appointed to deal with those issues, and the matter remained unresolved. This remains the Iraqi position to date.

4. During the reporting period, Ambassador Vorontsov continued his efforts aimed at facilitating the process of ascertaining the fate of all Kuwaiti and third-country nationals missing since the Gulf war, as well as the return of all Kuwaiti property. At the briefing on 17 August, he updated the members of the Security Council on his activities and contacts since the submission of the reports mentioned in paragraph 2 above. Those contacts included meetings with Giuseppe Baldossi, Political Director of the Foreign Ministry of Italy, Monsignor Celestino Migliore, Under-Secretary of the Secretariat of State of the Holy See, Peter Hain, Minister of State of the Foreign Office of the United Kingdom of Great Britain and Northern Ireland, Igor S. Ivanov, Foreign Minister of the Russian Federation and Loic Hennekinne, Secretary-General of the Foreign Ministry of France. Ambassador Vorontsov also met with Duaij Al-Anzi, Director-General of the National Committee for Kuwaiti missing and prisoner of war (POW) affairs, and Jean-Claude Aimé, Executive Secretary of the United Nations Compensation Commission (UNCC) in Geneva.

5. It will be recalled that the Coordinator has consistently emphasized that the humanitarian nature of the issue of missing persons should not be politicized and that the International Committee of the Red Cross (ICRC) should continue to play a central role in finding a solution to this problem. While respecting the Coordinator's mandate and efforts, ICRC remains convinced that the independence and confidentiality of its activities agreed upon by the members of the Tripartite Commission are essential conditions for a dialogue with the parties concerned. In this connection, the Coordinator had received a letter from ICRC stating that it would not be in a position to

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assist the Secretary-General in reporting to the Security Council on the issue of missing persons. Following my contacts with the ICRC President on 2 October, cooperation between the United Nations and ICRC has been enhanced.

6. Since the issuance of my first report pursuant to paragraph 14 of resolution 1284 (1999) (S/2000/347 and Corr.1), the Tripartite Commission has held meetings in Geneva, on 3 May, 21 June and 31 October 2000, without the participation of Iraqi representatives, who maintained that they would not attend the meetings of the Commission, nor those of the Technical Subcommittee, as long as those meetings were to be attended by countries that had no missing persons. In this connection, I would like to stress that the Tripartite Commission remains a valuable instrument for the resolution of the humanitarian issue of all missing persons and to express the hope that Iraq would be able to resume its participation in those bodies at the earliest date.

7. Ambassador Vorontsov's interlocutors among the members of the Tripartite Commission have pointed out that Iraq's past cooperation with this mechanism had demonstrated that, with all members participating, progress could be made on a non-political, humanitarian basis. They hoped that the Coordinator would help to secure renewed Iraqi participation in the meetings of the Tripartite Commission, as well as of the Technical Subcommittee, and supported his efforts, including contacts with the Organization of Islamic Conference (OIC), the League of Arab States and the Non-Aligned Movement. It was also emphasized that the efforts of the high-level Coordinator remained separate from those of the Tripartite Commission process, but were complementary to it.

8. The members of the Tripartite Commission (except for Iraq) strongly urged that regular contacts be continued between ICRC and the high-level Coordinator. In their view, resolution 1284 (1999) provides an opportunity to utilize his experience in order to reach an acceptable formula for resuming the search for the missing persons with active participation by all members of the Commission under ICRC chairmanship.

9. The Coordinator has consistently expressed his readiness to meet Iraqi officials inside or outside Iraq, of which the Iraqi authorities are no doubt aware. A direct dialogue is indispensable in clarifying questions pertaining to the resolution of the issues of the repatriation or return of Kuwaiti and third-country nationals and the return of all Kuwaiti property.

10. Since the appointment of the Coordinator, I have had several meetings with him to discuss his mandate and activities. He attended the Millennium Summit of the General Assembly in order to widen contacts with Member States.

III. Overview of recent activities related to the repatriation or return of Kuwaiti and third-country nationals or their remains and the return of Kuwaiti property

11. In my meetings with dignitaries attending the Millennium Summit, I have repeatedly raised the issue of Kuwaiti missing persons and properties, and requested that all necessary assistance and cooperation be extended to the high-level Coordinator. The Minister for Foreign Affairs of Iraq, Mohammed Said Al-Sahaf, reiterated to me that his country would not cooperate with anyone affiliated with resolution 1284 (1999), which continued to be rejected by Iraq. However, before my visit to Qatar to attend the OIC summit on 12 and 13 November 2000, the Permanent Representative of Iraq, Saeed Hasan, welcomed a comprehensive dialogue with the United Nations.

12. While attending the OIC summit, I had several high-level exchanges on the issue of Kuwaiti missing persons, including with the Deputy Chairman of the Revolutionary Command Council of Iraq, Ezzat Ibrahim. In my contacts with Iraqi representatives, I encouraged them to cooperate on the issue of missing persons and properties, including the national archives. If Iraq were to cooperate on these humanitarian issues, it could have a positive effect on the overall situation and would be a step in the right direction.

13. During my meeting in Doha with the First Deputy Prime Minister and Minister for Foreign Affairs of Kuwait, Sheikh Sabah Al-Ahmed Al-Jaber Al-Sabah, he expressed the hope that the issue of Kuwaiti missing persons and properties remained high on the United Nations agenda. I reaffirmed to him that these humanitarian issues remained priorities and expressed my appreciation for Kuwait's cooperation extended to the Coordinator.

14. Many interlocutors referred to the meeting of foreign ministers of the Gulf Cooperation Council held in Jeddah in September 2000, where they urged the Iraqi Government to respond to and to cooperate with Security Council resolution 1284 (1999), in particular, on the issue of repatriation and return of Kuwaiti and Saudi nationals, as well as of Kuwaiti property. In its final communiqué, participants in the OIC summit noted that in the implementation of the obligations stipulated in international and humanitarian law and relevant Security Council resolutions, the Conference called for the prompt resolution of the issue of Kuwaiti prisoners and missing persons as well as the nationals of other countries in collaboration with ICRC. It also called for cooperation on the proposals made by Iraq concerning missing Iraqi nationals under the auspices of ICRC.

15. During my meeting in New York on 31 August with the Speaker of the Kuwaiti Parliament, Jassem Mohammad Al-Khorafi, the issue of Kuwaiti missing persons was addressed in detail. The Speaker appreciated the role played by the United Nations in this humanitarian issue and expressed the hope that the Security Council would continue to pursue the search for the missing persons. He stressed that his country considered this issue as entirely humanitarian, and therefore it should be separated from any other disputes relating to Iraqi-Kuwaiti relations. The Speaker reiterated this position to the Coordinator during his recent visit to Kuwait.

16. I have also taken note of the recent visit to Baghdad of the Iranian Foreign Minister, Kamal Kharrazi, during which it was agreed to reopen the files on prisoners of the 1980-1988 conflict between Iraq and the Islamic Republic of Iran. Both countries conducted talks with ICRC aimed at the exchange of remaining POWs. Ambassador Vorontsov met in New York with Dr. Kharrazi.

17. On the margins of the Millennium Summit, the Coordinator had numerous discussions on the issue of Kuwaiti missing persons and property with a view to exploring new venues of cooperation aimed at the earliest resolution of this humanitarian matter. Ambassador Vorontsov met with the First Deputy Prime Minister and Minister for Foreign Affairs of the State of Kuwait, Sheikh Al-Sabah, the Minister for Foreign Affairs of Jordan, Abdel-Elah Khatib, the Under-Secretary of State of the United States of America, Thomas Pickering, the Secretary-General of the League of Arab States, Ahmed Esmat Abdel-Meguid, the Secretary-General of the Organization of the Islamic Conference, Azzedine Laraki, and other dignitaries.

18. The Coordinator visited Geneva from 31 October to 2 November, where he met the President of ICRC, Jakob Kellenberger, and some members of the Tripartite Commission. Dr. Kellenberger noted that despite numerous bilateral contacts between ICRC and the parties concerned, there had been no significant progress, except for the case of the missing Saudi pilot. The ICRC President stated that he had no objection in principle to contacts with the Coordinator.

19. From Geneva, the Coordinator proceeded to Kuwait, where he stayed from 2 to 6 November. There he was received by the First Deputy Prime Minister and Minister for Foreign Affairs, Sheikh Al-Sabah, the Deputy Prime Minister and Minister of Defence, Sheikh Salem Sabah Al-Salem Al-Sabah. He also met with representatives of the National Committee for Missing and POW Affairs and with the Force Commander of the United Nations Iraq-Kuwait Observation Mission (UNIKOM), Major General John A. Vize. Ambassador Vorontsov's interlocutors expressed profound concern over the plight of the missing Kuwaiti and third-country nationals. It was emphasized that the issue should be dealt with as a strictly humanitarian one and that its politicization should be avoided. There was a distinct sense of urgency that the resolution of the humanitarian issue of the Kuwaiti and third-country missing persons should not be further delayed.

20. Ambassador Vorontsov was informed of various reports received by the Kuwaiti authorities on some locations in Iraq where several missing persons, whose names had not been revealed, might be held. My interlocutors and those of the Coordinator's among the ministers for foreign affairs of some Arab countries indicated that when they had raised the question of missing Kuwaiti persons on the Iraqi territory with the Deputy Prime Minister of Iraq, Tariq Aziz, he had denied that he was aware of reports of this nature. However, he indicated that Iraq might request "an Arab body" to conduct the search for such missing persons.

21. It will be recalled that the Coordinator, in his briefing to the Security Council on 17 August, pointed to the intense exchanges on the issue of the missing persons between the Kuwaiti and Iraqi authorities (see

S/2000/478, S/2000/502, S/2000/622, S/2000/686 and S/2000/735). In this context, some members of the Council have observed that the international community should not be selective and that all missing persons, whether Kuwaitis, Iraqis or others, should be taken into account. The Coordinator, on this occasion, reiterated that his mandate, as defined by resolution 1284 (1999), was limited to Kuwaiti and third-country nationals and that the search for the Iraqi missing persons should be conducted through the mechanisms of the Tripartite Commission and ICRC.

22. In this connection, while in Geneva, Ambassador Vorontsov brought to the attention of ICRC a non-paper prepared by the Secretariat on recent contacts between the Iraqi representatives and the Force Commander of UNIKOM. The Iraqi authorities expressed interest in recovering the bodies of Iraqi nationals buried in a number of locations in the demilitarized zone. On 11 October, a senior Iraqi liaison officer requested and received assistance from UNIKOM in locating four grave sites within the demilitarized zone, three on the Iraqi side and one on the Kuwaiti side. The Iraqi officials maintained that all soldiers buried there were Iraqi nationals, but no estimate of the numbers was provided.

23. Both the Minister for Foreign Affairs and the Minister of Defence of Kuwait informed the Coordinator that their Government would consider this matter as a humanitarian issue and therefore would react positively to any Iraqi approach in that regard. From contacts the Secretariat has had with the Iraqi representatives, it is understood that Iraq does not seek a United Nations role in this matter, except for the facilitation of access to the grave sites by UNIKOM.

24. I have also taken note of the developments in the case of a missing Saudi pilot. For several years ICRC concentrated its efforts on organizing a joint Iraqi-Saudi operation to retrieve the remains of a Saudi pilot whose plane had crashed in Iraq during the Gulf war. The remains of a Saudi pilot were found in late October under ICRC auspices. The Head of the Committee for Saudi Prisoners of War in Iraq, Prince Torki Ben Mohammed Ben Saud Al-Kabir, stated on this occasion that a search team of experts had been accompanied by officials from Saudi Arabia and Iraq. Djordje Drndarski, deputy representative of ICRC in Baghdad, said that an examination of the remains would be carried out to confirm identity. The recovery operation indicates a path to be taken by interested parties in the field of cooperation on the issue of missing persons.

25. The Coordinator maintained contacts with the leadership of the League of Arab States (see A/55/401, para. 3) and the Organization of the Islamic Conference. During a conversation with Ambassador Vorontsov in New York, the Secretary-General of the Arab League, Ismat Abdel-Meguid, stated that the disclosure of the whereabouts of the POWs and missing persons in Iraq would put an end to this humanitarian and social issue and would contribute to settling differences between Iraq and Kuwait.

26. The Secretary-General of the League of Arab States was subjected to criticism by Iraq for placing the issue of the Kuwaiti missing persons at the top of his priorities. On 3 September, the Minister for Foreign Affairs of Iraq, Mr. Al-Sahaf, stated that the Secretary-General of the League of Arab States was constantly bringing up in his reports the problem of missing Kuwaitis without ever mentioning the 1,150 Iraqis missing in Kuwait and Saudi Arabia. Speaking in Cairo at the conclusion of the meeting of Arab Foreign Ministers on 4 September 2000, Dr. Abdel-Meguid reiterated that Iraq was obliged to solve the issue of the Kuwaiti and third-country nationals missing in Iraq and to implement resolution 1284 (1999). He denied that démarches regarding the Iraqi missing persons had been ignored by his Organization and stressed that the Arab League supported the efforts of the Tripartite Commission, which he said was addressing the matter.

27. The Special Rapporteur of the Commission on Human Rights, Andreas Mavrommatis, had discussions with Iraqi and Kuwaiti officials on the issue of the missing persons (see A/55/294, paras. 30-43) last summer. He pointed out that Iraq was willing to extend its cooperation to ICRC and to have bilateral meetings with representatives of Kuwait.

28. In a letter dated 2 November 2000 (A/C.3/55/5) the Permanent Representative of Iraq transmitted the response of the Government of Iraq to the report of the Special Rapporteur. Regarding the Kuwaiti missing persons, the response stated that Iraq was continuing to search and inquire for missing persons of all nationalities, including Kuwaitis, and that Iraq affirmed its readiness to continue to inquire as to the fate of the Kuwaiti and other missing persons, in cooperation with ICRC and with those members of the Tripartite Commission that actually did have cases of missing

persons. The Government of Iraq appreciated the initiative taken by the Special Rapporteur in addressing the issue of the Iraqi missing persons.

29. After considering the report of the Special Rapporteur, the General Assembly, on 4 December 2000, adopted resolution 55/115 in which it called upon the Government of Iraq to cooperate with the Tripartite Commission and its Technical Subcommittee to establish the whereabouts and resolve the fate of the remaining several hundred missing persons, including prisoners of war, Kuwaiti nationals and third-country nationals, and to cooperate with the Coordinator of the Secretary-General for Kuwaitis and third-country nationals and Kuwaiti property.

30. As regards the return of Kuwaiti property, Iraq continues to maintain that it has returned a large part of the property found in Iraq and has expressed its readiness to return what it might find in the future. Iraq also noted that persons whose property was not returned could file compensation claims with UNCC. In Iraq's view, progress could be achieved in UNCC, and the Coordinator should examine this aspect of the problem more closely. Kuwait maintains that the return of the national archives, military equipment and museum items remains the highest priority. Unfortunately, there has been no progress on the priority issues. The list of items belonging to the archives is annexed to the present report.

31. It will be recalled that the Permanent Representative of Kuwait to the United Nations informed a Security Council panel on prisoners of war and Kuwaiti property, which was established under the chairmanship of Ambassador Celso L. N. Amorim of Brazil, that no private property had been returned, but that claims for compensation had been presented to UNCC. He clarified that while much of the property would be subject to claims at UNCC, the main problem, namely, return of the national archives and military equipment, was essential. Museum items could not be compensated for because of their uniqueness.

32. The Coordinator has taken note of the conclusions made by the panel that the UNCC could address only the issue of those replaceable items that are claimed to have been lost in Iraqi possession. The UNCC officials indicated to Ambassador Vorontsov that in some cases Kuwait might face difficulties in providing evidence, given the destruction or loss of documentation during the period of Iraq's occupation and withdrawal from Kuwait.

33. While visiting UNCC, the Coordinator was informed that Kuwait did not seek monetary compensation for certain items of tangible property lost, in view of the fact that such items were irreplaceable and priceless (for example, such items as moon rocks or specially bound Holy Books which belonged to the Amiri Diwan). Also, since many of Kuwait's archives and records that existed prior to Iraq's invasion were destroyed at that time, it was difficult to identify both what was lost and to ascertain whether it had been returned.

34. He was informed further that there was nothing that UNCC could do for claimants seeking an order compelling the return of irreplaceable objects and other tangible properties stolen by Iraq, since UNCC had been established for purposes of awarding monetary compensation for losses and had no mechanism for requiring or enforcing specific performance. UNCC could not recommend compensation if there was no claim for such compensation.

35. There are also claims for compensation for the families of the missing persons. Such claims could not be processed by UNCC because of certain regulations (claims of individuals who have been detained in Iraq may be submitted within one year of the detainee's release or death, as legally determined by the detainee's Government). Therefore, the claims of the missing persons cannot be filed since they have neither been released nor has their death been legally determined by the Government of Kuwait. The UNCC review of the claims could be performed when the missing are released or when the Government of Kuwait determines that they are deceased. UNCC is not, therefore, yet in a position to consider claims submitted by the missing persons or on their behalf.

36. On 11 October, the Permanent Representative of Iraq, Mr. Hasan, in a letter, informed the Secretariat that four paintings allegedly belonging to Kuwait had been found in the local markets and were ready to be returned to Kuwait on a specific date to be designated by the Secretariat. It will be recalled that similar letters were received in December 1998 and December 1999. Some of the items found on the Iraqi markets were referred to in my second report pursuant to paragraph 14 of resolution 1284 (1999) (S/2000/575, para. 9). Except for the above-mentioned letters, no attempts

have been made by the Iraqi authorities to hand over to Kuwait, through the United Nations or by any other means, the Kuwaiti property that remains in the possession of Iraq.

37. In a letter dated 6 December 2000, Ambassador Mohammed Abulhasan, the Permanent Representative of Kuwait to the United Nations, informed the Coordinator of the type and the volume of the archives belonging to the Offices of the Amiri Diwan, the Prime Minister and the Council of Ministers that were carried to Iraq during its occupation of Kuwait. A list of these files, as well as those belonging to the Ministry of Foreign Affairs of Kuwait (see S/2000/575, para. 14), is included in the annex below.

IV. Observations

38. The lack of progress regarding the issues of repatriation or return by Iraq of all Kuwaiti and third-country nationals or their remains and the return of Kuwaiti property remain of serious concern. Regrettably, the Iraqi authorities continue to refuse cooperation with the Coordinator, and his sincere and purely humanitarian endeavours have not been reciprocated. I would like to welcome the fact that ICRC, in accordance with its mandate, is continuing efforts to gather information on all missing persons through ongoing and direct contacts with all parties.

39. Adherence to international humanitarian law and principles should be placed above all other concerns. Iraq's compliance with its obligations would demonstrate respect for these laws and principles and would be welcomed by the entire international community. Iraq's cooperation towards putting an end to this long-standing human tragedy would not be inconsistent with Iraq's own stated assurances that it regards the problem as a humanitarian one (see S/2000/502 and S/2000/622) and that it does not want to use it for political gains. As the Government of Iraq claims to seek a resolution to the issue of its own missing nationals, it is essential that it exercise an appropriate and sensitive understanding of the position held by the Government of Kuwait and other countries concerned. Above all, the suffering of detained and missing persons and their families finally deserves attention by the authorities in Iraq. The display of goodwill in these humanitarian matters would be of utmost importance with regard to possible progress on other issues concerning Iraq.

40. I believe that the establishment of an effective dialogue between Ambassador Vorontsov and the competent Iraqi authorities would constitute an indispensable step towards resolving this humanitarian problem, which continues to divide the Governments of Kuwait and Iraq and which is of a great concern to the members of the Security Council and to the international community in general.

Notes

[1] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 1* (A/55/1), para. 55.

Annex

Items belonging to the archives

Documents pertaining to the Amiri Diwan

1. Minutes of the meetings between His Highness the Amir of Kuwait with Heads of State and State guests.
2. Letters exchanged between His Highness the Amir of Kuwait and the kings and presidents of friendly countries.
3. Letters exchanged between the Amiri Diwan and other official bodies in the State.
4. Amiri decrees.
5. Private letters from citizens and other individuals addressed to His Highness the Amir of the State of Kuwait.

Documents pertaining to the Diwan of the Crown Prince and the Council of Ministers

1. Minutes of the meetings between His Excellency the Prime Minister, Heads of Governments and State guests.
2. Minutes of the official meetings of the Council of Ministers.
3. Letters exchanged between the Prime Minister and his counterparts around the world.
4. Letters exchanged between the Council of Ministers and the governmental bodies in the State.
5. Official resolutions and statements of the Council of Ministers.
6. Documents and files pertaining to the function of the committees and their follow-ups:
   (a) Documents pertaining to the Supreme Defence Council: 15 files;
   (b) Documents pertaining to the Supreme Oil Council: 30 files;
   (c) Documents pertaining to the Supreme Population Council: 11 files;
   (d) Documents pertaining to the Supreme Council for Planning: 10 files;
   (e) Documents pertaining to the Council of Civil Service: 3 files;
   (f) Documents pertaining to the Supreme Council of the Governorates: 6 files.
7. Set of record books, financial documents and files pertaining to the management of administrative and financial affairs in the secretariat of the Council of Ministers.
8. Set of documents kept in files and related to the administrative affairs of the Diwan:

(a) Resolutions and circulars issued by the secretariat of the Council of Ministers;

(b) Names of the employees working at the Council of Ministers.

Documents pertaining to the Ministry of Foreign Affairs

The following documents are divided into several types as follows:

1. Confidential documents:

   (a) Communications of Kuwait's diplomatic missions accredited abroad with the Ministry of Foreign Affairs;

   (b) Communications of the Ministry of Foreign Affairs with Kuwait's diplomatic missions accredited abroad;

   (c) Communications of foreign missions accredited to Kuwait with the Ministry of Foreign Affairs;

   (d) Communications of the Ministry of Foreign Affairs with the foreign missions accredited to Kuwait;

   (e) Communications of the official authorities in the Government with the Ministry of Foreign Affairs;

   (f) Communications of the Ministry of Foreign Affairs with the official authorities in the Government.

2. Regular documents.

3. Agreements concluded between the State of Kuwait and foreign countries.

4. Credentials of the heads of diplomatic missions accredited to the State of Kuwait.

5. Minutes of regional and international conferences and meetings in which the State of Kuwait participated (summit, ministerial and specialized committees).